UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1997/NGO/27
5 August 1997

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Prevention on Prevention
of Discrimination and
Protection of Minorities
Forty-ninth session
Item 9 of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written statement submitted by the International Federation of Human Rights Leagues, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 August 1997]

1. The International Federation of Human Rights Leagues (FIDH) and its affiliate the Tunisian Human Rights League (LTDH), are deeply concerned at the continuing violations of human rights in Tunisia and wish, in particular, to draw the attention of the Sub-Commission to the violations of the freedoms of association and assembly that are taking place.

2. In 1994, Mr. Sadok Chaabane, the Tunisian Minister for Justice, stated: "a special feature of the political regime established by President Ben Ali is that the State itself represents society". There could be no better way of indicating the extent to which the Tunisian regime's conception of what society should be excludes the very idea of any form of autonomous associative fabric. This conception of society results in substantial obstacles to the exercise of the freedoms of association and assembly, both in law and in practice. This conception also underlies the establishment of a large number of pseudo-NGOs created and remotely controlled by the authorities.

The legal framework

3. Although freedom of association is formally guaranteed by article 8 of the Tunisian Constitution, it is hampered by a number of legislative provisions affecting both the establishment and the functioning of associations.

4. The general rules applicable to associations are laid down in Law No. 59-154 of 7 November 1959, as amended in 1988 and 1992. This law makes the establishment of an association subject to prior authorization by the Minister for the Interior, who grants or denies "approval" and who can also dissolve a legally established association. The 1988 amendments introduced a possibility of judicial remedy that has remained essentially theoretical. The purpose of the amendments introduced on 2 April 1992 was to establish four categories of association, according to the type and character of their activities: the associations already in existence on the date of entry into force of the law were thus classified as "sports" associations, "cultural" associations, "social" associations or "general" associations, the relevant classification being determined by ministerial order.

5. Special rules were imposed on the "general" associations. These included:

(a) The obligation to accept any application for membership, under pain of prosecution. This is in flagrant contradiction with the very principle of freedom of association, which implies, first and foremost, the freedom to choose one's future associates;

(b) Prohibition of participation in the leadership of both an association and a political party.

6. Political parties, which had previously been governed by the law concerning associations, are covered by a special law, promulgated on 3 August 1988, which makes the establishment of any party subject to authorization by the Minister for the Interior. Some provisions of this law are openly discriminatory and are both coercive and dissuasive.

7. The establishment and functioning of trade unions are governed by a chapter of the 1966 Labour Code which imposes no requirement of prior authorization. This is one notable exception to the rules that apply to all other forms of association.

8. The criminal law classifies as a crime punishable by a prison sentence with no possibility of remission "membership of an unauthorized association", regardless of the nature of the association's activities and thus including associations which are exclusively peaceful in character.

Administrative practice

9. The administrative practice only emphasizes the limits imposed on freedom of association by the law. These limits show the clear determination of the authorities to maintain direct control over the network of associations.

10. There have been cases in which ministerial departments have refused to issue an acknowledgement proving the submission of an application, thus preventing commencement of the four-month period provided for by law and therefore creating a de facto obstacle to the establishment of a new association or a new party.

11. Many pressures are exerted against parties deemed to be showing too much independence. The most flagrant recent example of this is the strict residence restriction imposed on Mr. Mohamed Moadda, President of the Social Democrat Movement (MDS), following his release on 30 December 1996.

12. In recent years there has been a quasi-systematic refusal to authorize the establishment of associations that are not launched by the authorities. Thus the "Club Ibn Rochd de la pensée", the Association for the Promotion of Human Rights and the Association of Historians failed to receive approval. Authorization for the establishment of the Tunisian Association of Democratic Women and of the Tunisian Section of Amnesty International was granted only after a wait of several years.

13. The Tunisian Human Rights League has had imposed on it, according to its own statement, "a general blackout of its activities and, for the last two years, a total ban on the publication and dissemination of its press releases and position papers concerning human rights and freedom in the national media". The activities of trade unions have also been closely monitored.

14. The absolute determination of the authorities to control the activities of associations was shown by the publication early in 1997 of two decrees of a particularly anti-liberal nature:

(a) On 25 January 1997 the Minister for Higher Education issued Circular No. 07/97, addressed to universities and higher education institutions, regulating the holding of seminars, conferences and congresses. The circular requires the organizers of such events "to provide the competent authorities of the Ministry of the Interior with a list of the speakers and the agenda. [...] bodies and persons organizing or participating in the organization of such events are expressly required to submit copies of any documents that will be used or circulated at the event".

(b) In March 1997 the Regional Tourism Office of Tunis sent out a circular to the managements of hotels in the region requiring them to notify the police authorities of any request for the holding in their establishment of any meeting, seminar or even wedding, such notice having to specify the identity of the organizers, the date, the duration and the purpose of the event, as well as the number of participants and their nationality.

15. In addition to this interference of the authorities in the activities of associations, considerable pressures are exerted on the individual members of associations that might oppose official views. There have been a number of cases in which persons who had been accused of "membership of an unauthorized association" were dismissed from public employment, without regard to presumption of innocence and without following the dismissal procedures laid down by law.

16. Persons upholding human rights are harassed and intimidated.

17. The lawyer Hachemi Jegham, President of the Tunisian Section of Amnesty International, was arrested and interrogated twice by the police at the Sousse police headquarters, on 8 and 9 March 1997. He was questioned to find out whether he had participated in a seminar. Another example was the systematic police surveillance of the doctor Moncef Marzouki, the lawyer Najib Hosni and Mr. Khemäis Chamari and their families, over a period of months. The surveillance of Mr. Chamari was ended on 11 May 1997 following strong pressure by international organizations.

18. In the night of 29 to 30 April 1997, the office of Ms. Radhia Nassraoui, a lawyer and member of LTDH well-known for her commitment to human rights, suffered serious acts of vandalism: "They broke in the door of my office, which they ransacked. Files, documents concerning pending cases and others in boxes were scattered about, cupboards were searched and their contents flung on the floor. [...] In my view all these criminal acts, which I cannot efface from my memory, were intended to punish me for having always acted as counsel for victims of repression, torture and violations of human rights" (press release issued by Ms. Nassraoui on 30 April 1997).

19. Defenders of human rights have been constantly subjected to interception of their telephone calls, deprivation of passport, harassment and intimidation, including dismissal and professional penalties.

Pseudo non-governmental organizations

20. Attention is also drawn to the appearance and development, alongside the genuine "associations", of a parallel phenomenon, the "district committees", established between 1990 and 1995, of which there are said now to be more than 4,000. Established directly by branches of the Rassemblement constitutionnel démocratique (RCD), the party in power, these committees are under the administrative and political control of the Ministry of the Interior. They cover the entire country and in fact perform a police supervision and recruitment role.

21. The Government's determination to exercise control over associations has had repercussions even at the international level. In recent years there has been considerable growth in the number of so-called "off-shore" NGOs, including "Avocats sans frontières", "Jeunes médecins sans frontières" and "Mouvement des mères", which were set up on the initiative of the political authorities and whose function is to plead the Government's case in international forums and among the genuine NGOs.

22. The human rights situation in Tunisia will thus be seen to be extremely disturbing. The dichotomy between the statements of the authorities concerning human rights and the daily occurrence of systematic violations of fundamental freedoms remains a matter of grave concern for all defenders of human rights. The International Federation of Human Rights Leagues and the Tunisian Human Rights League call on the Sub-Commission to react with the greatest firmness by condemning these violations.